VJH

263 NLRB No. 157

D--9222
Houston, TX

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

MAGNA CORPORATION

and

Case 23--CA--8894

OIL, CHEMICAL AND ATOMIC
WORKERS LOCAL UNION 4--367,
AFL--CIO

DECISION AND ORDER

Upon a charge and an amended charge filed on April 22 and 29, 1982, respectively, by Oil, Chemical and Atomic Workers Local Union 4--367, AFL--CIO, herein called the Union, and duly served on Magna Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 23, issued a complaint on May 3, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, amended charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 2, 1977, in Case 23--RC--

4549, the Union was certified as the exclusive bargaining representative of the employees of Respondent in the following bargaining unit:

> INCLUDED: All production and maintenance employees, quality control employees, and plant clerical employees and shipping clerks.
>
> EXCLUDED: All other employees, including office clerical employees, professional employees, safety coordinator, production coordinator, guards, watchmen and supervisors within the meaning of the Act.

Subsequently, on April 9, 1982, the Board, pursuant to the issuance of its Decision on Review and Order (261 NLRB No. 9), clarified in Case 23--UC--115 the certification in Case 23--RC--4549 by specifically including in the appropriate unit, as a plant clerical, the classification of plant storeroom specialist.[1]

The complaint further alleges that, commencing on or about April 18, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On May 7, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

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[1] Official notice is taken of the record in the representation proceeding, Case 23--UC--115, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va, 1967); Follett Corp., 146 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

On June 10, 1982, counsel for the General Counsel filed directly with the Board a ''Motion To Transfer Case Before Board and Motion for Summary Judgment.'' Subsequently, on June 21, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has filed a response to the General Counsel's motions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and in its response to the Notice To Show Cause, Respondent admits that it refused to bargain with the Union with regard to the plant storeroom specialist. Respondent denies, however, that it thereby violated Section 8(a)(5) and (1) of the Act, arguing that the Board improperly clarified the Union's certification to include in the appropriate unit the classification of plant storeroom specialist as the issue had been decided in an arbitration award and because the plant storeroom specialist does not share a community of interest with the bargaining unit employees. The General Counsel contends that Respondent is attempting to relitigate the issues it raised in the related UC representation proceeding. We agree with the General Counsel.

Review of the record herein, including the record in Case 23--UC--115, shows that on September 2, 1977, in Case 23--RC--4549, the Union was certified as the exclusive bargaining representative of Respondent's production and maintenance employees;[2] that on September 18, 1981, the Union filed a petition for clarification, in Case 23--UC--115, to include in the unit the classification of plant storeroom specialist; that, subsequently, the Regional Director dismissed the petition to clarify the unit; and, finally, that the Board granted the Union's request for review, and, in its Decision on Review and Order dated April 9, 1982, noting the arbitration award, clarified the unit by including, as a plant clerical, the plant storeroom specialist. It thus appears that Respondent is attempting to raise herein issues which were raised and determined in the underlying UC representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section

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[2] The appropriate unit was:

INCLUDED: All production and maintenance employees, quality control employees and plant clerical employees and shipping clerks.

EXLCUDED: All other employees, including office clerical employees, professional employees, safety coordinator, production coordinator, guards, watchmen and supervisors within the meaning of the Act.

8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior UC representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the UC representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is a California corporation with a place of business located in Houston, Texas, where it is engaged in the business of chemical processing. During the past 12 months, a representative period, Respondent, in the course and conduct of its business operations, shipped products, goods, and materials valued in excess of $50,000 from its Houston, Texas, facility directly to points located outside the State of Texas.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in

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[3] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Oil Chemical and Atomic Workers Local Union 4--367, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

INCLUDED: All production and maintenance employees, quality control employees, and plant clerical employees and shipping clerks.

EXLCUDED: All other employees, including office clerical employees, professional employees, safety coordinator, production coordinator, guards, watchmen and supervisors within the meaning of the Act.

2. The certification

On September 2, 1977, in Case 23--RC--4549, the Union was certified as the exclusive bargaining representative of the employees of Respondent in said unit. Subsequently, on April 9, 1982, the Board clarified the certification in Case 23--RC--4549 (in Case 23--UC--115) by specifically including in the above appropriate unit, as a plant clerical, the classification of plant storeroom specialist.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 2, 1977, the certification was clarified on April 9, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about April 18, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit as clarified. Commencing on or about April 18, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since April 18, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several

States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229, (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Magna Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Oil, Chemical and Atomic Workers Local Union 4--367, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All production and maintenance employees, quality control employees, and plant clerical employees and shipping clerks.

EXCLUDED: All other employees, including office clerical employees, professional employees, safety coordinator, production coordinator, guards, watchmen and supervisors within the meaning of the Act.

4. Since September 2, 1977, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit, as clarified on April 9, 1982, for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 18, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has

engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Magna Corporation, Houston, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Oil, Chemical and Atomic Workers Local Union 4--367, AFL--CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

INCLUDED: All production and maintenance employees, quality control employees, and plant clerical employees and shipping clerks.

EXCLUDED: All other employees, including office clerical employees, professional employees, safety coordinator, production coordinator, guards, watchmen and supervisors within the meaning of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facility in Houston, Texas, copies of the attached notice marked ''Appendix.''[4] Copies of said notice, on forms provided by the Regional Director for Region 23, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(c) Notify the Regional Director for Region 23, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C. September 16, 1982

John R. Van de Water, Chairman

Howard Jenkins, Jr., Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Oil, Chemical and Atomic Workers Local Union 4--367, AFL--CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

INCLUDED: All production and maintenance employees, quality control employees, and plant clerical employees and shipping clerks.

EXCLUDED: All other employees, including office clerical employees, professional employees, safety coordinator, production coordinator, guards, watchmen and supervisors within the meaning of the Act.

MAGNA CORPORATION

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, One Allen Center, Room 920, 500 Dallas Avenue, Houston, Texas 77002, Telephone 713--229--7755.